

281—41.300(256B,34CFR300) Parental consent and participation.**41.300(1) Parental consent for initial evaluation.***a. General.*

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 41.503(256B,34CFR300) and 41.504(256B,34CFR300), obtain informed consent, consistent with rule 41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

b. Special rule: initial evaluation for a child who is a ward of the state and not residing with a parent. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. Parental refusal to provide consent for initial evaluation.

(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 41.300(1) "a," or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this chapter, including the mediation procedures under rule 41.506(256B,34CFR300) or the due process procedures under rules 41.507(256B,34CFR300) to 41.516(256B,34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B,34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation under 41.300(1) "c"(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond or refuses to consent to services under 41.300(2) "a," the public agency may not use the procedural safeguards of this chapter, including the mediation procedures or the due process procedures under this chapter, to obtain agreement or a ruling that the services may be provided to the child.

d. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

(1) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(2) Is not required to convene an IEP team meeting or develop an IEP for the child for the special education and related services for which the public agency requests such consent.

41.300(3) Parental consent for reevaluations.*a. General.* Subject to 41.300(3) "b":

(1) Each public agency must obtain informed parental consent, in accordance with 41.300(1) “a,” prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 41.300(1) “c.”

(3) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B,34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in 41.300(3) “a” need not be obtained if the public agency can demonstrate that:

- (1) It made reasonable efforts to obtain such consent; and
- (2) The child’s parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required. Parental consent is not required before:

- (1) A review of existing data as part of an evaluation or a reevaluation; or
- (2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

b. Additional consent requirements. In addition to the parental consent requirements described in subrule 41.300(1), the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency’s use of failure to give consent. A public agency may not use a parent’s refusal to consent to one service or activity under 41.300(1) or 41.300(4) “b” to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in 41.300(1) “c” and 41.300(3) “a”; and

(2) The public agency is not required to consider the child as eligible for services under rules 41.132(256B,34CFR300) to 41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in 41.300(1) “a”(3), 41.300(1) “b”(1), 41.300(2) “b,” and 41.300(3) “b”(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parent participation. The identification process shall include interactions with the individual, the individual’s parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel shall seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.